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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
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NICHOLAS A. ROSSI, *Republican Chief Counsel*

September 27, 2008

Secretary of the Treasury Henry Paulson
Chairman of the Federal Reserve Ben Bernanke
Speaker of the House Nancy Pelosi
House Republican Leader John Boehner
Senate Majority Leader Harry Reid
Senate Republican Leader Mitch McConnell
Chairman Christopher Dodd
Ranking Member Richard Shelby
Chairman Kent Conrad
Ranking Member Judd Gregg
Chairman Barney Frank
Ranking Member Spencer Bachus
Senator Bob Bennett

Gentlemen and Speaker Pelosi:

I write with some suggestions on the prospective legislation to deal with the economic crisis and to urge you to take the time necessary to give appropriate consideration to it without rushing to judgment. In the past week, I, like many members, have been reaching out to economists and other experts and have had suggestions coming in from economists and other experts, as well as listening to the suggestions made by other members of Congress.

I urge you to consider lending federal funds with senior security as opposed to having the federal government buy toxic securities. The AIG model could be used. The obvious difficulty for the federal government to go into the market to buy toxic securities is the difficulty in assessing realistic value in the absence of a market. With a lending approach, the government is likely to be able to have lesser expenditures with a better chance of repayment. I further urge a real consideration to the proposals made by House Republicans for an industry-financed insurance program for mortgages which are in default.

As to the overall figure of \$700 billion, Congress should have a detailed explanation as to how at which that figure was arrived and the necessity for such a large sum. I favor the proposal to have the federal funds advanced in installments. Consideration should be given to having the

first installment less than the \$250 billion as currently proposed. On additional installments, it is a good idea to require a presidential certification with the legislation specifying standards which the President should use.

On the stipulation to give Congress to the option to object to the final \$350 billion, care must be exercised not run afoul of the Supreme Court decision in *INS v. Chadha* which requires following regular legislative process with passage by both houses and presidential approval to overrule presidential action and perhaps inferentially legislative conditions.

In a letter dated September 21, 2008 I wrote to Majority Leader Reid and Minority Leader McConnell urging that we not rush to judgment. Many have argued that the situation is so dire that there must be immediate Congressional action in order to avoid a cataclysmic result in the market. My view, as expressed in my letter to Secretary Paulson and Chairman Bernanke on September 23, 2008, is that dire consequences are not likely to result if it is seen that the Congress is moving as fast as practicable to enact a serious, substantial program since there is a solid consensus that some major government aid must be and will be forthcoming.

On September 19, 2008, there were predictions of dire consequences if legislation was not passed by September 26th. The Dow declined by 2.15% from September 19th from 11,388.44 to September 26th to 11,143.13. During this time, there was no major deviation from September 19th: 9/22 – down 3.27%; 9/23 – down 1.47%; 9/24 – down .27%; 9/25 – up 1.82%; 9/26 – up 1.1%. It is noteworthy that the market ended on a positive note at the end of the week, even though Congress had not passed legislation.

I urge time for due deliberation because of the risks when we do not follow regular order. For those who are not acquainted with the details of the legislative process, there should be a focus on the institutions of Congress which have served this nation so well for more than 200 years. The legislative process begins, as we all know, with the introduction of a bill. As yet, we do not have in writing the traditional starting point, a bill which we can study and analyze. Next there are hearings on the bill with testimony from its proponents. Then the committee of jurisdiction listens to opponents or those with other ideas and all the witnesses are subject to questioning, really cross examination, by members of the committee.

Then the committee sits in what is called a markup going over the proposed legislation line by line with votes on suggested changes. A committee report is then filed and the measure is called for floor action in each house with debate and opportunity for amendments. The bills passed by each house are then subjected to a conference where further refinement is made before the legislation is presented to the president.

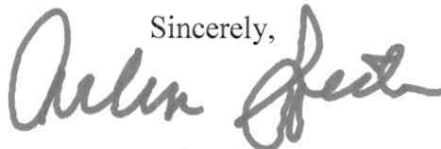
When we depart from regular order, we are on very risky ground. I am not suggesting that this full time-consuming legislative process be followed; but we should take great care in the consideration of this legislation to compensate as much as possible for the departure from regular order.

I pass on, for your consideration, an idea proposed by former Speaker of the House Newt Gingrich who suggests that the final proposal be put on the internet for 24 hours. Speaker Gingrich suggests, and I concur, that such a proposal would be read by thousands if not millions of people who could then inform the Congress of provisions which are so often slipped into legislation unbeknownst to the members and further give us appraisals of unintended consequences.

As already noted, I wrote to Secretary Paulson and Chairman Bernanke by letter dated September 23, 2008 (copies enclosed for the additional addressees), not yet answered, which raises questions which I would like to have responded to before I am called upon to vote.

We have a duty to the American people to act responsibly to address the problem, protect the taxpayers, and take every measure to ensure that this does not happen again.

Thank you for your consideration of these suggestions.

Sincerely,

Arlen Specter

Enclosures

EDWARD M. KENNEDY, MASSACHUSETTS
JOSEPH R. BIDEN, Jr., DELAWARE
HERB KOHL, WISCONSIN
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September 23, 2008

Henry M. Paulson, Jr.
Secretary of the Treasury
Department of the Treasury
15th and Pennsylvania Avenue, NW
Washington, DC 20220

Ben S. Bernanke
Chairman of the Board of Governors
Federal Reserve System
Constitution Avenue & 20th Street
Washington, DC 20551

Dear Secretary Paulson and Chairman Bernanke:

I write to you because I am in the process of deciding how to vote on legislation to deal with the economic crisis. I agree that there is need for federal action; but I am concerned that we not rush to judgment without giving sufficient attention to the many complex issues which are involved.

At the outset, the, or a, precipitating cause was the fact that hundreds of thousands of people, perhaps as many as five million, faced an inability to make their mortgage payments and eviction from their homes. These mortgages were "securitized," divided up and sold in packages to many people or entities. As a result, it was not always clear who had the authority to adjust these mortgages, and when it was clear, adjustments were not made quickly enough. Last November, Senator Durbin introduced S.2136 and I introduced S.2133 to give the bankruptcy courts authority to revise homeowners' financial obligations. Keeping people in their homes should be a, if not the, fundamental object of congressional action.

After assisting homeowners, a decision should then be made as to what additional federal aid is necessary to unclog the lending pipelines and restore confidence and stabilize the economy. I am very skeptical about granting authority to spend \$700 billion on other aid without standards as to who should get the funds and a requirement that there be demonstrated necessity that such additional expenditures are indispensable to stabilizing the economy.

Then there is the question of oversight and regulation. Obviously, there must be oversight and some regulation to prevent a recurrence. As I see it, the regulation must be calibrated to those objectives and not go too far. Vigorous enforcement of our laws to prevent market manipulation, as well as added transparency, should be a priority.

I hear tremendous resentment from my constituents on this matter. In a free enterprise society, entrepreneurs may undertake whatever risks they choose to secure big profits, but when there are losses, they should not turn to the government for a bailout which puts the burden on the taxpayers. The firms/corporations and their executives who created the crisis should not profit from a federal bailout. If it is not already a part of your proposal, you should consider structuring the funding in a way that gives the Government a preferred creditor position and a


share in ultimate profits, rather than simply buying up debt which has declined in value. And any aid should be conditioned on the elimination of golden parachutes or large compensation packages.

Also, I am concerned about reports that foreign corporations, with a United States affiliate, will participate in a federal bailout. If foreign corporations are to get funding, then foreign governments ought to bear their fair share.

I know there is concern that Congress must act promptly or the economy may deteriorate further. It seems to me that Wall Street should and would understand that legislation on this complex matter requires some time. If it is seen that Congress is moving as swiftly as practicable, that ought to stem the tide. But we can only do it as fast as realistic to work through the legislative proposals and resolve these intricate issues.

These are issues which come to my mind at the moment and I am sure there will be more as the hearings progress and the debate occurs. I would appreciate your responses as promptly as possible.

Sincerely,



Arlen Specter

Via Facsimile:

Secretary Paulson

Chairman Bernanke

United States Senate

WASHINGTON, DC 20510-3802
specter.senate.gov

September 21, 2008

Senator Harry Reid
Majority Leader
United States Senate
Washington, D.C.

Senator Mitch McConnell
Minority Leader
United States Senate
Washington, D.C.

Dear Harry and Mitch;

As you project the Senate's schedule, I urge that we not rush to judgment and take whatever time is necessary on any proposed legislation to deal with the nation's economic problems. The public, our constituents, have a great deal of skepticism, which I share, about legislation which will let Wall Street "off the hook" and pay insufficient attention to Main Street, middle class Americans.

It is important to focus the legislation on the hundreds of thousands of homeowners who are at risk of losing their residences to foreclosure.

In deciding what additional powers to give to the federal regulators, I believe we should give careful consideration to not extending those powers beyond the current crisis and steps to prevent a recurrence.

I have read reports that some Wall Street firms, whose conduct has created the crisis, will benefit from a congressional legislative fix. We should do our utmost to see to it that those responsible for the crisis bear the maximum financial burden on any bailout in order to minimize the taxpayers' exposure.

There are reports that the bailout might be extended to foreign firms with United States affiliates. In my view, the legislation must be carefully tailored for United States' interests and if foreign firms, even if United States affiliates are to be involved, then consideration should be given to appropriate contributions from those foreign governments.

I realize there is considerable pressure for the Congress to adjourn by the end of next week, but I think we must take the necessary time to conduct hearings, analyze the Administration's proposed legislation, and demonstrate to the American people that any response is thoughtful, thoroughly considered and appropriate.

Sincerely,


Arlen Specter

Cc:

Speaker Nancy Pelosi
Senator Christopher Dodd
Senator Richard Shelby
Secretary of Treasury Hank Paulson
Chairman of the Federal Reserve Ben Bernanke
Chairman of the Securities and Exchange Commission Christopher Cox

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